

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION I – NEW ENGLAND**

IN THE MATTER OF:)	NOTICE OF VIOLATION
)	AND REPORTING REQUIREMENT
)	
AES Thames)	Proceeding under Sections 113
141 Depot Road)	and 114 of the Clean Air Act
Uncasville, Connecticut 06382)	
)	Docket No. CAA-06-0014
_____)	

I. STATUTORY AUTHORITY

1. The United States Environmental Protection Agency (“EPA”) issues this Notice of Violation (“NOV”) and Reporting Requirement (“RR”) to AES Thames under Sections 113 and 114 of the Clean Air Act (“CAA” or “Act”), 42 U.S.C. §§ 7413 and 7414.
2. Section 113(a)(1) of the Act, 42 U.S.C. § 7413(a)(1), provides that whenever, on the basis of any information available, EPA finds that any person has violated or is in violation of any requirement or prohibition of an applicable state implementation plan (“SIP”) or permit, EPA shall notify the person of such finding.
3. The State of Connecticut has adopted a SIP within the meaning of Section 113(a) of the Act. The Connecticut SIP has been approved by EPA under Section 110 of the Act, 42 U.S.C. § 7410. The Connecticut SIP includes various federally-approved portions of the Connecticut Air Pollution Control Regulations (“APC Regulations”).
4. As required by Section 113(a) of the Act, this NOV contains EPA’s findings that AES

Thames (AES) has violated requirements of its permit and of the Connecticut SIP contained in SIP-approved versions of the APC Regulations.

5. Separately, Section 114(a)(1) of the Clean Air Act, 42 U.S.C. §7414(a)(1), gives EPA the authority to require AES to sample emissions and provide information so that EPA can determine AES's compliance with the Act and its implementing regulations.

6. This RR requires AES to submit certain information to EPA.

7. This NOV and RR is not subject to Office of Management and Budget review pursuant to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

II. FACTUAL BACKGROUND

8. On July 29, 1987, pursuant to APC Regulation 22a-174-3, the Connecticut Department of Environmental Protection (DEP) issued AES a Prevention of Significant Deterioration (PSD) permit to construct (permit # 11) two bituminous coal fired boilers (Units A and B), each rated at 923 million British thermal units per hour (MMBtu/hr).

9. Regulation 22a-174-3, entitled "Permits for Construction and Operation of Stationary Sources," was first approved by EPA into the Connecticut SIP on May 31, 1972. See 37 FR 23085. This regulation has been periodically revised by DEP, including the recent addition of subsection 3(a). These revisions have been approved by EPA and incorporated into the SIP.¹

10. Permit #11 was revised and reissued as a permit to operate on October 3, 1990. The 1990

¹ EPA approved SIP revisions on 12/23/80 (see 45 FR 84769); on 1/7/82 (see 47 FR 762); on 2/23/93 (see 58 FR 10957); and on 2/27/03 (see 68 FR 9011).

permit was amended and reissued on January 10, 1995 (permit #10).

11. Both the 1990 and the 1995 permits limit hourly steam production to 700,000 pounds per hour (lb/hr) for each boiler, and specify that compliance with the steam production limits will be the primary method for determining compliance with the permits' limits on maximum coal firing rate and maximum hourly heat input. Both the 1990 and 1995 permits limit each boiler's maximum hourly heat input limit to 923 MMBtu/hr and limit each boiler's maximum coal input rate to 78,200 lb bituminous coal/hr.

III. VIOLATIONS

12. On numerous days of operation from January 2000 to the present, AES produced more than 700,000 lb steam in a single hour on Units A and/or B.

13. During a 2001 stack test, Units A and B each operated at 718,000 lb steam / hr.

14. In the years 2002, 2003, and 2004, the annual average steam production of Units A and B was above 700,000 lb/hr.

15. On numerous days of operation in 2001, AES exceeded each boiler's maximum hourly heat input limit of 923 MMBtu/hr, resulting in annual average heat inputs of 947.8 MMBtu/hr and 942.6 MMBtu/hr for Units A and B, respectively.

16. Therefore, EPA finds that AES has violated permits # 10 and #11, and the Connecticut SIP, by operating Units A and B in excess of permit steam and heat input limits.

IV. REPORTING REQUIREMENT

17. Within 35 days of receiving this Notice of Violation and Reporting Requirement, AES shall submit the information described in paragraphs 19 – 25 to:

Stephen S. Perkins, Director
Office of Environmental Stewardship
U.S. Environmental Protection Agency, Region 1
One Congress Street, Suite 1100
Boston, Massachusetts 02114
Attn: Rebecca L. Kurowski (SEA)

and

Patrick Bowe, Enforcement and Inspection Manager
Connecticut Department of Environmental Protection, Air Bureau
79 Elm Street
Hartford, Connecticut 06106

18. For each of the items in paragraphs 19-25, provide separate answers for Unit A and Unit B. If possible, provide the responses to items 19-22 in an electronic spreadsheet format on a CD-ROM.

19. For each calendar month, from November 1990 through December 2005, provide:

- a) The date, hour, and corresponding hourly steam production (in lb/hr);
- b) The highest level of steam production achieved for a single hour (in lb); and
- c) Total steam production (in lb) for the month.

20. For each calendar month, from November 1990 through December 2005, provide:

- a) The date, hour, and corresponding hourly coal input rate (in lb/hr);

- b) The highest coal input rate achieved for a single hour (in lb); and
 - c) Total coal input (in lb) for the month.
21. For each calendar month, from November 1990 through December 2005, provide:
- a) The daily heating value of the coal (in Btu / lb); and
 - b) The daily heat rate of the boiler (in Btu / kilowatt-hour).
22. For each calendar month, from November 1990 through December 2005, provide
- a) Nitrogen oxides (NO_x) emissions (in tons);
 - b) Carbon monoxide (CO) emissions (in tons);
 - c) Sulfur dioxide (SO₂) emissions (in tons); and
 - d) Particulate matter emissions (in tons).
23. As indicated in Section III, AES data indicate that it operated Units A and B in excess of the coal input rate of 78,200 lb/hr and the steam production rate of 700,000 lb/hr on numerous days of operation since January 2000. Please explain if and how AES changed the operation of these Units to effect this increase. Please describe any specific physical and/or operation changes that AES made to the Units and the dates of these changes.
24. Provide answers to the following questions regarding Acid Rain Program applicability pursuant to 40 C.F.R. § 72.6:
- a) Did Unit A or B serve a generator with a nameplate capacity greater than 25 MWe any time between November 15, 1990, and December 2005?

b) Provide summary data that shows the potential electrical output capacity of Units A and B between November 1990 and December 2005. Provide all supporting data used to prepare such summary data.

c) Provide summary data that shows the sale of electrical output generated by Units A and B to a utility power distribution system from November 1990 through December 2005. Provide all supporting data used to prepare such summary data.

d) Provide summary data on the three-calendar year annual average sales from Units A and B of electrical output to any utility power distribution system from November 1990 through December 2005. Provide all supporting data used to prepare such summary data.

e) During any three-calendar year period between November 15, 1990, and December 2005, did either Unit A or B sell an annual average of more than one-third of its potential electrical output capacity on a gross basis to a utility power distribution system?

f) During any three-calendar year period between November 15, 1990, and December 2005, did either Unit A or B sell more than 219,000 MWe-hrs electric output on a gross basis to a utility power distribution system?

g) Was Unit A or B an exempt qualifying facility under 40 C.F.R. § 72.6(b)(5) at any time between November 15, 1990, and December 2005? Did Units A and B fail to meet the definition of qualifying facility?

h) Was either Unit A or B an exempt independent power production facility as identified in 40 C.F.R. § 72.6(b)(6) at any time between November 15, 1990, and December 2005?

i) During any three-calendar year period between November 15, 1990, and December 2005, was either Unit A or B an exempt solid waste incinerator as identified in 40 C.F.R. § 72.6(b)(7) which derived 20% or more of its heat input (on a Btu basis) from fossil fuel?

25. If AES believes Units A and B are exempt from Acid Rain Program applicability pursuant to 40 C.F.R. § 72.6, explain and provide summary data showing how AES meets one or more of the exemptions contained in 40 C.F.R. § 72.6(b) for one or both Units. Provide any and all correspondence between AES and EPA or AES and Connecticut DEP pertaining to any aspect of the Acid Rain Program.

V. ENFORCEMENT

26. At any time after thirty (30) days of the date of issuance of this NOV, EPA may issue AES a compliance order, issue an administrative penalty order, and/or commence a civil judicial action for penalties and injunctive relief, regarding any of the SIP violations cited above. See Sections 113(a), (b) and (d) of the Act, 42 U.S.C. §§ 7413(a), (b) and (d), and 40 CFR Part 19 (Clean Air Act judicial and administrative penalties raised from \$25,000 to \$27,500 effective January 30, 1997, then to \$32,500 effective March 16, 2004). Be advised that where EPA or another agency has notified a source of a violation, in certain circumstances the violation shall be presumed to continue for each and every day from the date of notice until the violator establishes that continuous compliance has been achieved. See Section 113(e)(2) of the Act.

27. If AES does not provide the information required by the RR, EPA may order AES to

comply and may assess monetary penalties under Section 113 of the Act. Be advised that federal law establishes criminal penalties for providing false information to EPA.

28. AES may, if desired, assert a business confidentiality claim covering part or all of the information requested, in the manner described by 40 C.F.R. § 2.203(b). Note that certain categories of information are not properly the subject of such a claim. If no such claim accompanies the information when it is received by EPA, the information may be made available to the public by EPA without further notice to AES. Be aware that Connecticut may have different rules and regulations governing the protection of confidential business information.

29. The issuance of this NOV and RR does not preclude EPA from electing to pursue any other remedies or sanctions authorized by law to address the violations described herein.


VI. OPPORTUNITY TO CONFER

30. AES may confer with EPA concerning this NOV and RR and the findings on which it is based. To schedule a face-to-face conference, please contact Rebecca Kurowski, Environmental Engineer at (617) 918-1863 within one week of AES' receipt of this NOV and RR, or have your attorney call Thomas T. Olivier, Senior Enforcement Counsel, at (617) 918-1737.

VII. EFFECTIVE DATE

31. This NOV and RR shall become effective immediately upon issuance by EPA.

SO ISSUED:



Stephen S. Perkins, Director
Office of Environmental Stewardship

4/28/06
Date